REMARKS

Claims 1-15 have been withdrawn to pursue them in a continuation application. Pending claims 41, 42, 44 and 45 were indicated to be allowable in the Final Action.

Applicants do not concur with the claim rejections of the Office Action of July 2, 2004 ("Final Action"). Some specific points of disagreement are noted below. However, not addressing one or more specific grounds of rejection of the withdrawn claims does not and cannot be construed to imply that Applicants acquiesce in any grounds of rejection in the Final Action, nor does it or can it be construed to limit the scope of any claims that may issue in this patent application or any patent application claiming priority to this one.

35 U.S.C. §102

Applicants do not concur in the rejection of claims 1-15 in the Final Action, and reiterate the previous arguments against their rejection.

Although Gifford alludes to a "kit," nowhere does Gifford even suggest that its nebulous "kit" includes "a tray in which at least one recess is defined...wherein at least one said recess is configured to hold a biocompatible fluid." Indeed, Gifford fails to disclose any description whatsoever about, much less provide an enabling disclosure under MPEP 2121 of, the structure or even the function of the "kit."

Further, the Office Actions in this case have misapprehended the nature of the claimed pull-through tool, and have ignored the definition of this claim term in the specification. The pull through tool is a mechanism that is movable relative to the anastomosis device to pull a graft vessel through the crown to a position in which it can be everted over the anastomosis device. (*e.g.*, Figures 5A, 7, 18; Specification, page 16, lines 1-15) (emphasis added). Indeed, "[t]he pull-through tool 44 is moveable between a neutral configuration, in which the grasping elements 60 are separated from one another to receive a graft vessel, and an engaged

configuration, in which the grasping elements 60 have moved together to engage the graft vessel." (Specification; page 14, lines 9-12) (emphasis added). Applicants have chosen to be their own lexicographers, as allowed under MPEP 2111.01(III). The pull-through tool is a mechanism that receives and engages a graft vessel, as defined by Applicants. Where Applicants have acted as their own lexicographers, the definition set forth by the Applicants "will control interpretation of the term as it is used in the claim." (MPEP 2111.01(III)) (emphasis added). Because that definition controls the interpretation of the claim term, it is improper for the Office Action to assign a different meaning to that term.

In contrast, the Office Actions have analogized the pull-through tool to the vessel punch 120 of Gifford. The vessel punch 120 is a mechanism that enlarges a pre-existing opening in the side of a target vessel. (*e.g.*, Gifford, Figures 3, 5A-5B; column 16, lines 33-41; column 17, lines 3-31). The vessel punch 120 of Gifford has nothing to do with the graft vessel at all; it does not pull the graft vessel relative to the anastomosis device to facilitate its eversion over that anastomosis device. Further, the vessel punch 120 is not used for preparing anything for anastomosis, much less the graft vessel as claimed, but rather is used during anastomosis to enlarge a pre-existing opening in the target vessel. Thus, the vessel punch of Gifford is in no way analogous to the claimed pull-through tool.

Further, the Office Actions in this case have misapprehended the nature of the claimed poke-through tool, and have ignored the definition of this claim term in the specification. The poke through tool is a mechanism that is movable relative to the anastomosis device to cause the tines of the anastomosis device to poke through the graft vessel. (*e.g.*, Figures 16-17; Specification, page 21, line 5 through page 22, line 4). "The poke-through tool includes a membrane through which tines or sharp tips of the anastomotic device can penetrate, such that contact between the membrane and the end of the graft vessel pushes the graft vessel down onto the tines to fully engage them, thereby preparing the graft vessel for deployment."

(Specification, page 3, lines 18-21). Thus, the poke-through tool is necessarily separate and distinct from the anastomosis device. Applicants have chosen to be their own lexicographers, as allowed under MPEP 2111.01(III), such that the definition selected by the Applicants controls. The poke-through tool is a mechanism that pushes the graft vessel down onto the tines of the anastomosis device to fully engage them, as defined by Applicants.

In contrast, the Office Action analogized the poke-through tool to a component of an anastomosis device of Gifford: the fourth segment 111 of an attachment leg 105 of one part 101 of the two-part anastomosis device 100 of Gifford. (*e.g.*, Gifford, Figure 1, column 13, lines 24-25 and 33-54; column 14, lines 18-30). Gifford does not disclose any mechanism that pushes the graft vessel down onto the tines of the anastomosis device to fully engage them, whether separate from or part of the anastomosis device. Thus, the fourth segment 111 of the anastomosis device of Gifford is in no way analogous to the poke-through tool.

U.S. Patent No. 4,501,363 to Isbey, Jr. ("Isbey") teaches a surgical kit having a plurality of recesses. However, the Office Action fails to address the totality of claim 1, which also requires "at least one said recess...configured to hold a biocompatible fluid." Nowhere does Isbey expressly or inherently disclose any recess configured to hold a biocompatible fluid, or a fluid of any kind. Rather, Isbey is directed to a surgical kit having an inner tray that holds items to be used in surgery and an outer tray that holds items that are "given to the patient upon completion of the surgery" for use "in the patient's home." (*e.g.*, Isbey, col. 1, lines 60-62; col. 2, lines 21-24, 47-49, 62-68; col. 3, lines 37-50).

35 U.S.C. §103

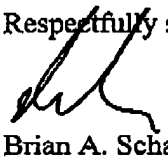
Applicants do not concur in the rejection of claims 9-10 in the Final Action, and reiterate the previous arguments against their rejection.

In addition, the Final Action states that "the fact that applicant has recognized another advantage which would flow naturally from the prior art cannot be the basis for patentability when the differences would otherwise be obvious." (Office Action, page 5). Applicants "recognize" no such thing. The Final Action misapprehends Applicants' argument in the Response to Office Action, which is that claims 9-10 do not claim protection against "premature puncturing," and that as a result any teaching of preventing premature puncturing in the prior art is completely irrelevant to claims 9-10. Applicants also note that the structural limitation of an eversion shield was rejected on functional, not structural grounds; not a single reference number in any drawing of Podmore is called out in the Final Action in support of the rejection.

REQUEST FOR ALLOWANCE

Pending claims 41, 42, 44 and 45 were indicated to be allowable in the Final Action. Thus, Applicants believe that this application is in condition for issue. Please contact the undersigned if there are any questions.

Respectfully submitted,



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